

M e m o r a n d u m**245.0485**

To: Inglewood – Auditing (RBP)

Date: April 29, 1975

From: Headquarters – Legal Counsel (HLC)

Subject: Goetz Pale “Near Beer”

This is in reply to your memorandum addressed to Mr. D. J. Hennessy dated March 25, 1975, in which you inquire whether sales of the subject product are subject to tax.

The photocopies of the product container that you furnished indicate that the product is “non taxable under Section 5051 I.R.C.” and that the product is brewed with grain, malt, hops, yeast, and water. You compare this product with [X] which was the subject of a memorandum dated --/--/----.

The statement “non taxable under Section 5051 I.R.C.” merely indicates that Goetz Pale “Near Beer” is not federally taxed as an alcoholic beverage. Checking with the Department of Alcoholic Beverage Control (ABC) we find that this product is not registered in California as an alcoholic beverage. We draw the conclusion that the alcohol content of the product is below that necessary to be legally defined as an alcoholic beverage for ABC purposes, however from the ingredients and name we would conclude that the product does contain some alcohol and that it is naturally carbonated.

Section 6359 of the Revenue and Taxation Code excludes from the definition of exempt food products spirituous and malt liquors and carbonated beverages. Even though we have concluded that the alcohol content is below that required under ABC rules for an alcoholic beverage, we would consider that it is a spirituous, malt liquor to the same extent as hard apple cider, which is not exempt as a spirituous liquor. (See B.T.L.G. Anno. 245.1440, August 22, 1955). We would also, barring information to the contrary, assume that the product is carbonated and thus not exempt for that reason as well.

HLC:gj